IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRL.APPEAL NO. 484-DB of 1997

DATE OF DECISION : 8-1-2007

Chanan Singh … Appellant.

Versus.

State of Punjab … … Respondent

CORAM:- HON'BLE MR. JUSTICE MEHTAB S.GILL
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. P.S.Hundal, Advocate,
for the appellant

Mr. S.S.Randhawa, Sr. DAG Punjab.

…

JUDGMENT:

This appeal is directed against judgment dated 25.4.1997 passed by the Sessions Judge, Amritsar, whereby in case FIR No. 47 dated 10.6.1994 u/s 302/34 IPC, Police Station Ajnala, District Amritsar, the accused-appellant has been convicted under Section 302 read with Section 34 IPC, for having committed the murder of Inderjit Singh and Nishan Singh and has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2000/- and in default of payment of fine, to further undero rigorous imprisonment for four months on each count. Both the sentences were, however, directed to run concurrently.

In brief, the facts of the case are that on 10.6.1994 at about 5.30 P.M., Jaswant Singh, PW2, made statement, Exhibit PK, before the police that he was an Ex.Sarpanch of Gram Panchayat Gagomahal. His real brother, Nirmal Singh and accused Chanan Singh were doing service in B.S.F. in Mounted force and were close to each other. Balwinder Singh @

Binda and Pritam Singh @ Prita, sons of the accused, were already known to the complainant since they were engaged in gold smuggling and supplying fire arms to the terrorists, for which they used to be apprehended by the police off and on. Later, at some stage, both Balwinder Singh and Pritam Singh started smuggling by joining Nirmal Singh with them. Nirmal Singh then developed enmity with the sons of the accused in regard to smuggled goods. Prior to the present occurrence, the complainant stated before the police that Balwinder Singh and Pritam Singh, duly armed with fire arm weapons, came to kill the complainant and his family members, when the arms of the sons of the accused were caught by B.S.F. and a case was registered against them. The police had initiated proceedings under Section 107/151 Cr.P.C. against said Balwinder Singh, Pritam Singh and Chanan Singh, accused, on one side and the complainant and his brother Inderjit Singh,deceased, on the other. Due to initiation of the said proceedings, licensed arms of both the parties were got deposited with the police. It is alleged by the complainant that on 10.6.1994 the afore-stated case of security proceedings was fixed in the court of Sub Divisional Magistrate, Ajnala, when both the parties appeared. Thereafter, Inderjit Singh deceased, brother of the complainant and Nishan Singh, Sarpanch, of Gram Panchayat Galib and his son Daljit Singh who had come with the complainant, started in jeep bearing registration No.PJX-6639 for going back to their house, which was being driven by Inderjit Singh while Nishan Singh Sarpanch was sitting with him on the front side. He(complainant) and Daljit Singh were sitting in the back portion of the jeep and the jeep was coming from Ajnala towards Gagomahal along the metalled road.When the complainant and others reached at a place half kilometer short of village Gujarpura, it was about 3.45 P.M. At that time, the complainant noticed that Pritam Singh, deceased, drove the jeep rashly and chased the jeep of the complainant. Balwinder Singh was sitting with Pritam Singh on the front side in the other jeep while accused Chanan Singh armed with a Kirpan was sitting in the back portion of the jeep. Pritam Singh over-took the jeep of Inderjit Singh, deaceased, and raised Lalkara to his brother and father that the complainant and his companions should not be allowed to escape alive. When the jeep being driven by Pritam Singh came parallel to the jeep being driven by Inderjit Singh, Balwinder Singh fired from his country made

pistol and the fire-shot hit Inderjit Singh and Nishan Singh,deceased. He and Daljit Singh jumped out from the jeep. Pritam Singh, deceased, son of the accused, took his jeep 100 yards ahead and then reversed it. Pritam Singh shouted that none of the complainant party should escape. Pritam Singh then got down from the jeep and fired from his pistol and the shots hit Inderjit Singh and Nishan Singh. Chanan Singh also got down from the jeep and gave Kirpan blows to Inderjit Singh after throwing him on the ground. The accused then searched for the complainant and Daljit Singh but they had concealed themselves in the background of the trees. After firing upon Inderjit Singh and Nishan Singh and causing Kirpan blows to them, the accused and his two sons ran away in the same jeep along with their respective weapons. Both Inderjit Singh and Nishan Singh died at the spot on account of the injuries sustained by them. The complainant after leaving Daljit Singh near the dead bodies, proceeded to lodge a report with the police, when the police met him in the area of village Jagdev Khurd where he made statement Exhibit PK before the police, which later was read over by SI Amrik Singh (PW5) to him(complainant) who signed the same in token of its correctness.

The Investigating Officer made his endorsement,Exh.PK/1 on the statement Exhibit PK and sent the same to police station Ajnala for registration of the case against the accused. On the basis thereof, formal FIR Ex.PK/2 was recorded against the accused and his sons by MHC Gurnam Singh. SI Amrik Singh reached at the spot and prepared inquest reports Ex.PA/2 and Ex.PB/2 in respect of the dead bodies of Inderjit Singh and Nishan Singh respectively. He dispatched both the dead bodies for post-mortem examination through constables Satinder Singh and Rachhpal Singh along with his applications, Ex.PA/3 and Ex.PB/3. He also lifted six empties from the spot which were sealed after putting them in a box and then taken into possession vide recovery memo. Ex.PQ, attested by the witnesses. SI Amrik Singh also lifted blood-stained earth from the near the dead bodies of Nishan Singh and Inderjit Singh and after putting them in sealed parcels, took them into police possession vide recovery memo. Ex.PL and Ex.PN. Jeep bearing registration No.PJX-6639, and the registration certificate lying in the jeep were taken into possession vide recovery memo. Ex.PR . SI Amrik Singh prepared rough site plan Ex.PU of the place of

occurrence with correct marginal notes in his hand. On return to the police station, the Investigating Officer deposited the case property with seals intact with MHC of PS Ajnala. On conducting the post-mortem examination, the clothes removed from both the dead bodies were sealed into a parcel and taken into police possession vide recovery memo Ex.PV , attested by the witnesses. The doctor had also handed over one bullet taken out from the dead-body of InderjitSingh to the constables accompanyingthe dead-body which was also taken into police possession vdie recovery memo. Exhibit PX.

SI Amrik Singh arrested accused Chanan Singh formally from the jail on 21.6.1994 and after getting his police remand, interrogated him when he suffered disclosure statement Ex.PY to the effect that he had kept concealed 'Kirpan' Ex.P9 in the heap of 'Turi' and in pursuance thereto, the accused got recovered the said Kirpan which was taken into possession vide recovery memo. Ex.PY/2 before which its sketch Ex.PY/1 was prepared. Later, on 4.7.1994, MHC of Police Station Lopoke had produced two pistols before the Investigating Officer along with 7 empties and three live cartridges which were taken into police possession after making them into two sealed parcels vide recovery memo. Ex.PZ attested by the witnesses. Rough sketches Ex.PZ/1 and Ex.PZ/2 of both the pistols were also prepared. Jeep bearing registration No.NL-02/1730 was also taken into police possession from Police Station Lopoke vide recovery memo. Ex.PZ/4. Both Pritam Singh @ Prita and Balwinder Singh @ Binda were killed in a police encounter on 11.6.1994 regarding which separate FIR, Exh. PZ/3 was registered at Police Station Lopoke. After completion of investigation, the accused was challaned by SI Amrik Singh.

On commitment of the case, accused was charge-sheeted under Section 302/34 IPC on two counts for having committed the above-stated double murder, to which he pleaded not guilty and claimed trial.

The prosecution, in support of its case, examined PW-1 Dr.Gurmanjit Rai, who stated that he conducted the post-mortem examination on the dead bodies of Inderjit Singh and Nishan Singh. He opined that the injuries were ante-mortem in nature and the death was due to fire-arm injuries. PW-2 Jaswant Singh, brother of the deceased Inderjit Singh, and PW-3 Daljit Singh, son of deceased Nishan Singh, have

narrated the incident being the eye-witnesses. PW-4 Piara Singh, a retired Ahlmad from the court of SDM Ajnala, has proved the factum of both the parties having attended the court of SDM Ajnala in connection with proceedings under Section 107/151 Cr.P.C. on the date of occurrence. SI Amrik Singh appeared as PW-5 being the Investigating Officer. PW-6, Inspector Rajinder Singh, deposed in regard to recovery of two pistols from near the dead-bodies of Inderjit Singh and Nishan Singh who were killed in an encounter on the night intervening 10/11th June,1994.

Accused Chanan Singh in his statement under Section 313 Cr.P.C. pleaded innocence and false implication. In defence evidence, he examined as DW-1 Ravinder Kumar Sehgal, Deputy Manager, State Bank of India, Ajnala, who stated that on 10.6.1994 , i.e. the date of occurrence, Chanan Singh was present in the Bank and had withdrawn a sum of Rs.700/- from his saving account and the withdrawal slip bears his signatures.

On consideration of the entire evidence on record, the learned Sessions Judge vide judgment dated 25.4.1997 held the charge proved against accused Chanan Singh (appellant herein) and thus, convicted and sentenced him, as stated above. Hence, the present appeal.

Learned counsel for the parties have been heard.

The present case relates to the double murder of Inderjit Singh and Nishan Singh. The case mainly rests upon the statement of PW-2 Jaswant Singh, brother of the deceased Inderjit Singh and PW-3 Daljit Singh, son of deceased Nishan Singh. The defence has assailed the testimony of both these witnesses on account of close relationship. This contention is meritless. It is not the absolute law that evidence of a relation witness is not entitled to any weight but this very circumstance would add to the value of his evidence because he would be interested in ensuring that the real culprit responsible for the crime is punished. Therefore, relationship is not a factor to affect credibility of a witness. The factum of both the parties having attended the court of SDM Ajnala in connection with proceedings under Section 107/151 Cr.P.C. on the date of occurrence, has been duly proved by PW-4 Piara Singh, a retired Ahlmad from the court of SDM Ajnala. PW-2 Jaswant Singh has given the manner of occurrence reiterating almost similar version so stated in his statement Exhibit PK

wherein he clearly deposed against the present accused-appellant Chanan Singh and his two sons namely Pritam Singh @ Jita and Balwinder Singh @ Billa having caused injuries to Inderjit Singh and Nishan Singh, resulting into their death. His statement is duly corroborated by PW-3 Daljit Singh on material particulars. Both the witnesses were subjected to lengthy cross-examination and they stood firm on their stand. The defence in cross-examination could not extract anything which could benefit it in any manner. There are no reasons to disbelieve their statements.

The defence counsel has also pointed out that Parduman Singh, an important witness, has not been examined and as such, an adverse inference should have been drawn against the prosecution. This contention is without any merit. PW-2 Jaswant Singh has stated that he had gone to inform the police within 10/15 minutes after the occurrence and when he came back, Parduman Singh was seen by him. PW-3 Daljit Singh has also stated that Parduman Singh had come there after 20/25 minutes, after Jaswant Singh went to inform the police. Thus, from the said statements, it is apparent that Parduman Singh was not an eye-witness to the occurrence and if the prosecution has not examined him, it does not affect the prosecution case.

The defence counsel has laid much stress on the plea of ali-bi of accused Chanan Singh by referring to statement of DW-1 Ravinder Kumar Sehgal, Deputy Manager, State Bank of India, Ajnala, who has stated that on 10.6.1994 Chanan Singh had withdrawn a sum of Rs.700/- from his saving account and the withdrawal slip bears his signatures. This plea is again not sustainable for variety of reasons. Firstly, accused-appellant Chanan Singh in his statement under Section 313 Cr.P.C. has not taken any such plea. Secondly, it is not evident from the statement of DW-1 Ravinder Kumar Talwar that at the time of occurrence, Chanan Singh was in the bank at Ajnala. Rather, he has stated in cross-examination that the business hours in the bank are from 10 AM to 2 PM and as such, even if for the sake of arguments it is assumed that Chanan Singh was in the bank till 2 PM, then also the possibility of his presence at the place of occurrence at 3.45 P.M. cannot be ruled out particularly when there was a little distance, i.e. 2 kms. as stated by PW-3 Daljit Singh, between the place of occurrence and Ajnala.

PW-1 Dr.Gurmanjit Rai had conducted the post-mortem examination on the dead bodies of Inderjit Singh and Nishan Singh. He opined that the injuries were ante-mortem in nature and the death was due to firm-arm injuries. Injury No.8 on the person of Inderjit Singh was found to be an incised wound on the back of left side of the neck and he had also opined that the injury could be by a sword. Thus, the medical evidence also supports the ocular account. Accused-appellant Chanan Singh had not only share the common intention but also participated in the commission of crime. The sword, Ex.P9 was also recovered by virtue of disclosure statement of accused-appellant Chanan Singh. Sword (Kirpan) was sent to the Chemical Examiner who vide his report Ex. PAB found it having human blood. No doubt, there is no blood group mentioned in the report but it does not affect the case of the prosecution in view of the dicta of the Hon'ble Supreme Court in Gura Singh v. State of Rajasthan, 2001 Supreme Court Cases (Crl.) 323, wherein there was a seizure of blood stained Chaddar from the disclosure statement of the accused. It was held that by the lapse of time, classification of the blood could not be determined and the accused cannot claim any benefit on the strength of a belated and stale argument that in the absence of the report regarding the origin of the blood, accused cannot be convicted. It has already come in the statement of PW-6, Inspector Rajinder Singh, that two pistols were recovered from near the dead-bodies of Inderjit Singh and Nishan Singh who were killed in an encounter on the night intervening 10/11th June,1994.

Thus, on a close analysis of the prosecution evidence, it is proved that the present appellant-Chanan Singh and his two deceased sons had committed the murders of Inderjit Singh and Nishan Singh in furtherance of their common intention. In our view, the learned trial Court has rightly convicted and sentenced the accused-appellant in the manner indicated above. No interference is thus, called for. The present appeal is dismissed.

(ARVIND KUMAR)
JUDGE

January 8, 2007 (MEHTAB S. GILL)
JS JUDGE